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OCT 26 2005

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Paper No. 18

*In re* Application of  
BERKE, MICHAEL N.  
Appl. No.: 09/609,166  
Filed: July 03, 2000  
For: SELF-ADMINISTERED BACK MASSAGE  
Attorney Docket Number: P-3627-2

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: **DECISION DISMISSING**  
: **PETITION**  
: *37 CFR 1.181*  
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This is a decision on petitioner's request filed January 10, 2002 with a supplement to the petition filed January 11, 2002 to review the holding of abandonment, mailed April 8, 2003. The petition is considered pursuant to 37 CFR 1.181. No fee is required for this petition.

The petition is dismissed.

A review of the file history indicates that a final rejection was mailed on August 31, 2001 setting a shortened statutory period for response of 3 months. Extensions of time were available under 37 CFR 1.136(a). Failure to reply within the set or extended period for reply will, by statute, cause the application to become abandoned (35 USC 133). An after-final amendment was timely filed on September 17, 2001. The examiner issued an advisory action (mailed September 27, 2001) indicating that the proposed amendment would not be entered because the amendment raises new issues that would require further consideration and/or search. The examiner issued second and third advisory actions (mailed October 23, 2001 and November 1, 2001); however, the proposed after-final amendment was never indicated as being entered. No extensions of time were filed after the final rejection, so the application became abandoned by statute 3 months after the mailing of the final rejection (i.e. the application became abandoned by statute on December 1, 2001).

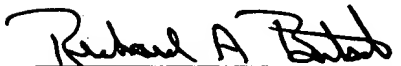
After the application became abandoned by statute, applicant filed a Request for an Extension of Time to File an Appeal Brief on January 10, 2002. This paper is in error because it refers to a Notice of Appeal that had not yet been filed and because the shortened statutory period for reply to the final rejection had expired and applicant did not request or pay for any extensions under 37 CFR 1.136(a).

The petition filed piecemeal on January 10 and January 11, 2002 is dismissed as untimely and moot in view of the fact that the application was abandoned.

It is noted that a Notice of Appeal was subsequently filed January 24, 2002. Although the Notice of Appeal contains an authorization to charge the fee for the Notice of Appeal, there is no authorization to charge fees for extensions of time under 37 CFR 1.136(a). So the Notice of Appeal filed January 24, 2002 is untimely. It is further noted that even if papers had been filed to extend the period of response so that the Notice of Appeal was timely, no Appeal Brief was ever filed and the time period for an appeal brief to be filed has also expired.

Lastly, it appears that a spurious paper was issued by the office and mailed March 17, 2005. This paper is vacated. Although a Notice of Abandonment has not been mailed, the application remains abandoned by statute.

Petitioners may file a renewed petition, without fee, addressing the points raised above. Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision, 37 CFR 1.181(f). No extensions of time under 37 CFR 1.136(a) are permitted. Petitioner may wish to consider filing a petition to revive under 37 CFR 1.137.

  
Richard A. Bertsch, Director  
Technology Center 3700